

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CIVIL APPLICATION NO.3612 OF 2006

IN

FIRST APPEAL ST.NO.3750 OF 2006

IN

MACT CASE NO.399 OF 2001 (30/1995)

New India Assurance Co.
Ltd.

..Applicant

Vs.

Smt.Shradha Sunil Soman
& Ors.

..Respondents

Ms.S.Bhargavan Advocate for applicant
Mr.A.S.Khandeparkar Advocate for respondents

**CORAM: SMT.RANJANA DESAI &
SMT.V.K.TAHILRAMANI, JJ.**

DATE : SEPTEMBER 29, 2006

P.C.

1. We have heard the learned counsel for the parties. The learned counsel for the applicant states that the entire decretal amount along with interest has been deposited in the trial Court. In view of this, in our opinion, the impugned judgment and order must be stayed during the pendency of the instant First Appeal.

2. The learned counsel for the respondents states that respondents may be permitted to withdraw an

amount of Rs.15 lakhs out of the deposited amount without security. In the circumstances of the case, we pass the following order:-

3. In view of the fact that the entire decretal amount along with interest has been deposited by the applicant in the trial Court, the operation and execution of the impugned judgment and decree shall remain stayed during the pendency of the instant First Appeal. Respondent 1 is representing the interest of respondent 2 who is minor daughter. In the facts and circumstances of the case, we are of the opinion that respondents must be permitted to withdraw an amount of Rs.15 lakhs out of the deposited amount. In respect of said amount, trial Court is directed to issue account payee cheques to respondents 1, 3 and 4. Since respondent 1 is representing the interest of respondent 2 who is a minor daughter, account payee cheque of her share of the said amount, will have to be issued in the name of respondent 1 who shall receive the said amount on behalf of respondent 2. The trial Court shall thus, issue account payee cheques as per the proportionate shares of respondents 1, 2, 3 and 4 in respect of the said amount of Rs.15 lakhs on the condition that

respondents 1, 3 and 4 give security to the satisfaction of the trial Court in respect of the said amount of Rs.15 lakhs. It is made clear that account payee cheques will be issued only after respondents 1, 3 and 4 furnish security to the satisfaction of the trial Court in respect of the said amount of Rs.15 lakhs.

4. Out of the rest amount, an amount of Rs.5 lakhs shall be kept in a fixed deposit in the name of respondent 1 as a guardian of respondent 2 in any nationalised bank till respondent 2 attains the age of majority. Trial Court is directed to invest the rest of the amount in a nationalised bank on usual terms which amount will abide by the final orders which may be passed in this First Appeal.

5. This order will substitute paragraphs 4 and 5 of the operative part of the impugned order.

6. Civil application is disposed of.

[SMT.RANJANA DESAI, J.]

[SMT.V.K.TAHILRAMANI, J.]